

2013 IL App (2d) 121114-U  
No. 2-12-1114  
Order filed September 30, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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CYNTHIA C. SHEEHAN,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 12-OP-1886
	)	
EDWARD SHEEHAN III,	)	Honorable
	)	Joseph J. Bruce,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE JORGENSEN delivered the judgment of the court.  
Justices Hudson and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The trial court's entry of an order of protection was proper, as its finding that respondent had abused petitioner was not against the manifest weight of the evidence: the court did not shift to respondent the burden of proof, instead merely discrediting respondent's testimony in light of, among other things, his failure to demonstrate his whereabouts on the night of the incident; (2) because petitioner filed a petition for an order of protection, the trial court had subject matter jurisdiction to award such an order; the court's inclusion of petitioner's daughter, despite petitioner's failure to specifically name her as a person to be protected, was not beyond its jurisdiction.

¶ 2 Respondent, Edward Sheehan III, appeals the trial court's order granting an order of protection under the Illinois Domestic Violence Act of 1986 (Act) (750 ILCS 60/101 *et seq.* (West

2012)) naming his estranged wife, petitioner Cynthia C. Sheehan, and K.S., his five-year-old daughter, as protected parties. He contends that the trial court's findings were against the manifest weight of the evidence and that the trial court lacked subject matter jurisdiction to include his daughter as a protected party when she was not named in the petition for an order of protection. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 On August 16, 2012, Cynthia filed a petition seeking an order of protection against Edward. A previous order of protection against Edward had recently expired. The petition included checked boxes stating that she was filing the petition on behalf of herself and her minor children. However, a line asking for the names of people to be included in the order was left blank. Boxes were checked showing that she sought custody of K.S. Cynthia stated in the petition that, each time Edward violated the previous order of protection, he terrified her and K.S. A separate divorce action was pending between Cynthia and Edward. The same day, the trial court issued an emergency order of protection naming Cynthia and K.S. as protected parties.

¶ 5 On September 5, 2012, a hearing was held. At the start of the hearing, the court called the divorce case and stated "for the record, I do have [the order-of-protection case], which is consolidated in this proceeding." The court noted that the matter was there for hearing on the issue of custody in the divorce proceeding and for a hearing on the order of protection. There was discussion about how to proceed, and it was decided that the court would hear evidence on the order of protection first.

¶ 6 Cynthia testified that, on the evening of Saturday, August 11, 2012, and through the early morning of August 12, 2012, she was at her apartment with K.S. and a friend, Kara Owen. The

apartment was at the end of a cul-de-sac, and Cynthia was awakened by the lights of a vehicle that pulled into her driveway. Owen was in the same room and was also awakened. Cynthia testified that she saw Edward get out of the passenger side of the vehicle and walk to the door while carrying something that looked like a box. He was wearing a dark-colored shirt with a yellow stripe across the front. He then repeatedly knocked on the door and rang the bell. Owen grabbed a baseball bat and turned on a hallway light. The driver of the vehicle then flashed the high-beam lights of the vehicle, Edward ran back to it, and the vehicle left.

¶ 7 The police were called and arrived shortly after. Cynthia testified that K.S. remained asleep through the incident, but woke up when the police arrived and was startled. Cynthia told her to go back to sleep and did not tell her why the police were at the house.

¶ 8 Owen testified and corroborated Cynthia's testimony. She stated that the vehicle lights lit up the room, that she could see the vehicle and the people from the window, and that, when she turned on a light, the knocking at the door stopped.

¶ 9 Evidence was also provided that, on August 15, 2012, Edward called the office of Cynthia's attorney, seeking her phone number in order to arrange counseling. A paralegal told him that he would have to have his attorney contact them. He also called his mother and K.S.'s guardian *ad litem* and asked for Cynthia's phone number.

¶ 10 Edward denied that he was at Cynthia's apartment that night. He said that he was at work until approximately 10 p.m. His job involved soliciting customers, and the company policy suggested stopping at 7:30 p.m. He could not recall the time that he stopped that night. He said that he went home and went to sleep. He also said that he did not own a shirt with a yellow stripe across the front. He said that he asked people for Cynthia's phone number on August 15 because he was

attempting to set up court-ordered counseling with K.S. for an appointment that day. He later admitted that there was no court order for counseling, but stated that he did not know that at the time. He could not recall the counselor's name or clinic. He also admitted that he had previously physically attacked Cynthia, resulting in the previous two-year order of protection. During some questioning, Edward appeared uncooperative. For example, when asked whether a sword that he owned was shorter than his hand, he did not directly answer the question, instead asking what the relevance was and stating, "[y]ou know—what's your point? What point are you getting at? I really do want to know." The court then told him to answer the question if he was able to do so.

¶ 11 Eva Stockton testified that she spent almost every weekend at Edward's home and that she did his laundry. She said that Edward did not own a shirt with a yellow stripe on it. She was not at his house on the night of August 11 and 12, 2012.

¶ 12 The court entered a plenary order of protection. In doing so, it began by summarizing the evidence, noting that Edward denied that he was at Cynthia's home. The court then stated, "[s]o the real issue is whether I'm going to conclude that Cynthia fabricated that [Edward] was the person who came to the house."

¶ 13 The court stated that there were questions raised from Cynthia's testimony, such as why Edward pounded on the door but left when the lights came on and why he carried a box but did not leave it. The court also stated that there were questions raised from Edward's testimony, such as why Stockton was not at his house that night and why he could not recollect his work hours when he was served with the petition a few days after. The court noted that, if Edward had been falsely accused, he would have made an effort to figure it out. The court then said that of most concern was that Edward was trying to contact Cynthia during the same period. The court noted that it was odd

that Edward would schedule a counseling appointment for August 15 and wait until that day to try to reach Cynthia about it. The court stated that it thought that Edward was making efforts to contact Cynthia only because he knew that the previous order of protection had expired.

¶ 14 The court ultimately found Cynthia to be the more credible party and stated, “I don’t think she’s making it up or falsely accusing Edward.” The court specifically found that Edward came to her apartment and pounded on the door. The court found that, under the circumstances, any reasonable person would have been frightened and alarmed. The court also noted that K.S. was present when the events occurred and thus it included her as a protected party. However, the court also noted that it was reserving the issue of contact between K.S. and Edward until further evidence was presented. The order of protection states that Cynthia was granted temporary custody, and a box is checked that visitation was reserved until further order of the court. Edward timely appeals.<sup>1</sup>

¶ 15

## II. ANALYSIS

¶ 16 Edward first contends that the trial court’s decision to award the order of protection was against the manifest weight of the evidence because the court incorrectly shifted the burden of proof.

¶ 17 Section 214(a) of the Act provides that, where the trial court finds that the petitioner has been abused, it shall enter an order of protection prohibiting such abuse. 750 ILCS 60/214(a) (West

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<sup>1</sup>The parties do not discuss appellate jurisdiction. However, we note that the court’s order adjudicated the core issue and left only incidental matters of custody and visitation, resulting in a final appealable order. See *In re T.H.*, 354 Ill. App. 3d 301, 308-09 (2004), *overruled on other grounds*, *Best v. Best*, 223 Ill. 2d 342 (2006); *In re Marriage of Gordon*, 233 Ill. App. 3d 617, 627-28 (1992). To the extent the order was not final, it was appealable as an injunction. See *in re Marriage of Fischer*, 228 Ill. App. 3d 482, 486-87 (1992) (citing Ill. S. Ct. R. 307(a)(1) (eff. Aug. 1, 1989)).

2012). “Abuse” as defined under the Act means “physical abuse, harassment, intimidation of a dependent, interference with personal liberty[,] or willful deprivation but does not include reasonable direction of a minor child by a parent or person in loco parentis.” 750 ILCS 60/103(1) (West 2012).

“Harassment” under the Act means:

“knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances; would cause a reasonable person emotional distress; and does cause emotional distress to the petitioner. Unless the presumption is rebutted by a preponderance of the evidence, the following types of conduct shall be presumed to cause emotional distress:

(i) creating a disturbance at petitioner’s place of employment or school;

(ii) repeatedly telephoning petitioner’s place of employment, home or residence;

(iii) repeatedly following petitioner about in a public place or places[.]” 750

ILCS 60/103(7)(i)-(iii) (West 2010).

¶ 18 The petitioner must prove abuse by a preponderance of the evidence. *Minteer v. Kozin*, 297 Ill. App. 3d 1038, 1042 (1998). A finding of abuse will be reversed only if it is against the manifest weight of the evidence. *Best*, 223 Ill. 2d at 350.

¶ 19 “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.” *Id.* “Under the manifest weight standard, we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and witnesses.” *Id.* “A reviewing court will not substitute its judgment for that of the trial court

regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn.” *Id.* at 350-51.

¶ 20 Relying on *Minteer*, and *In re Marriage of Gordon*, Edward contends that the trial court wrongly shifted the burden of proof to him to prove that he was not the person who went to Cynthia’s home. In those cases, the trial court entered an *ex parte* order of protection and later held a hearing to determine whether it should be extended. In both cases, the trial court found that the petitioner established a *prima facie* case at the *ex parte* hearing and shifted the burden to the respondent to negate the *prima facie* case. On appeal, the court held that the trial court applied the wrong standard. The trial court should have considered only the evidence presented at the later hearing and determined whether the abuse was proved by a preponderance of the evidence. *Minteer*, 297 Ill. App. 3d at 1042; *In re Marriage of Gordon*, 233 Ill. App. 3d at 650.

¶ 21 Here, the trial court did not shift the burden of proof. Unlike in *Minteer* and *Gordon*, the trial court did not apply evidence from the previous *ex parte* proceeding and it never mentioned a *prima facie* case or a shifting of the burden of proof. Edward contends that the trial court’s reliance on his lack of proof of where he was on the night of the incident, despite its questions about Cynthia’s testimony, showed that it ruled against him for failing to refute her story. But the trial court’s comments were simply statements about the credibility of the witnesses and the weight given to their testimony. The court clearly stated that, despite its questions with Cynthia’s testimony, it found that she was not falsely accusing Edward and that Edward came to her apartment and pounded on the door. Those findings were well supported by the evidence, as both Cynthia and Owen testified about the events. Although the court stated doubts about Edward’s testimony, that did not act to shift the burden of proof. The court was free to view Edward’s lack of proof of his work hours as a factor in

determining whether he was credible. Ultimately, the court's comments merely illustrated why it believed Cynthia's testimony on the central issue of whether she was abused by Edward. The court's determination was not arbitrary or unreasonable, nor was the opposite conclusion clearly evident. Accordingly, its decision was not against the manifest weight of the evidence.

¶ 22 Edward next contends that the trial court lacked subject matter jurisdiction to include K.S. as a protected party. He argues that K.S. was not named in the petition as a person to be included and that Cynthia did not pray for relief in connection with K.S. Although Edward briefly mentions questions of sufficiency of the evidence with regard to K.S., he does not argue that the court lacked sufficient evidence to include her in the order. Instead, he presents those concerns as part of his argument as to why the court lacked subject matter jurisdiction.

¶ 23 Edward did not raise the issue of subject matter jurisdiction in the trial court. Ordinarily, an issue not raised in the trial court is forfeited. However, the issue of subject matter jurisdiction may be raised for the first time on appeal. *In re Marriage of Epting*, 2012 IL App (1st) 113727, ¶¶ 27-28.

¶ 24 “[S]ubject matter jurisdiction’ refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs.” *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). “With the exception of the circuit court’s power to review administrative action, which is conferred by statute, a circuit court’s subject matter jurisdiction is conferred entirely by our state constitution.” *Id.* “Under section 9 of article VI, that jurisdiction extends to all ‘justiciable matters.’ ” *Id.* (quoting Ill. Const. 1970, art. VI, § 9). “Generally, a ‘justiciable matter’ is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.” *Id.* at 335. “To invoke a circuit court’s subject matter jurisdiction,



a petition or complaint need only ‘alleg[e] the existence of a justiciable matter.’ ” *In re Luis R.*, 239 Ill. 2d 295, 301 (2010) (quoting *In re M.W.*, 232 Ill. 2d 408, 426 (2009)). “Indeed, even a defectively stated claim is sufficient to invoke the court’s subject matter jurisdiction, as ‘[s]ubject matter jurisdiction does not depend upon the legal sufficiency of the pleadings.’ ” *Id.* (quoting *Belleville Toyota*, 199 Ill. 2d at 340). “In other words, the *only* consideration is whether the alleged claim falls within the general class of cases that the court has the inherent power to hear and determine. If it does, then subject matter jurisdiction is present.” (Emphasis in original.) *Id.*

¶ 25 Here, Cynthia properly filed a petition seeking a protective order. The filing of the petition placed a justiciable matter before the court. Although she did not include K.S. on a line for people to be included in the order, she checked a box stating that she was filing on behalf of her minor child. She also checked boxes concerning issues pertaining to custody and mentioned K.S. in her written allegations. In any event, the pleading might not have been as complete as possible, any insufficiency in the failure to name K.S. as a person to be protected or in a specific prayer for relief did not deprive the court of subject matter jurisdiction.

¶ 26 Edward relies on cases in which subject matter jurisdiction was lacking when an issue was not raised in a petition. But those cases involved circumstances where the proper action for relief was not commenced at all. For example, in *In re Marriage of Fox*, 191 Ill. App. 3d 514, 521-22 (1989), the court made a custody determination in a proceeding for a rule to show cause why a party should not be held in contempt for interfering with visitation rights. Since the Illinois Marriage and Dissolution of Marriage Act required the filing of a petition to modify custody, and no such petition was filed, jurisdiction was lacking. *Id.*; see also *Ligon v. Williams*, 264 Ill. App. 3d 701, 708-09 (1994) (custody determination in an action brought under the Illinois Parentage Act of 1984 was

improper when no petition raised the issue of custody). Those cases do not apply here, where a petition seeking a protective order was filed. That petition properly commenced the action and gave the court subject matter jurisdiction over the proceedings.

¶ 27

### III. CONCLUSION

¶ 28 The trial court did not improperly shift the burden of proof and it had subject matter jurisdiction to include K.S. in the order. Accordingly, the judgment of the circuit court of Winnebago County is affirmed.

¶ 29 Affirmed.